

REMARKS

Applicants have carefully reviewed the Office Action dated November 26, 2002. Applicants have amended Claims 1 and 9 to more clearly point out the present inventive concept. Reconsideration and favorable action is respectfully requested.

Claims 1-6, 8 and 9 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,064,979, *Perkowski*. This rejection is respectfully traversed as follows.

Regarding Claim 1, Applicants have amended the language of the second element of Claim 1 to clarify the physical relationship of the visual indicia and the machine readable code. As amended, the second element of Claim 1 reads as follows.

*"A visual indicia disposed on said surface in a predetermined proximate orientation to said machine readable code, such that the machine readable code and the visual indicia together form a defined composite appearance, indicative of a relationship between said machine readable code and the presence of a location on a network and that such location on the network can be accessed by a computer having an appropriate input device for reading said machine readable code, such that reading of said machine readable code by said input device will connect the computer to the location and wherein the visual indicia has no relationship to the product or service."*

Thus, Applicants' Claim 1 as amended recites a visual indicia for facilitating computer-based access of the network by a consumer, such that the combination of the machine readable code and the visual indicia are disposed in a predetermined proximate orientation to each other on a surface. This combination in such predetermined proximate orientation indicates two things. First, it indicates a relationship between the machine readable code and the presence of a location on a network. Second, it indicates further that such location on the network can be accessed by a computer having an appropriate input device for reading the machine readable code. Additionally, the machine readable code by itself has no association with the location on the network and the visual indicia has no relationship to the product or service.

According to the statute, 35 U.S.C. §102(e), which states in part, “a person shall be entitled to a patent unless *the invention* was described in a patent granted on an application for patent by another filed in the United States before *the invention* thereof by the Applicant for patent . . .” Thus, in a rejection under this paragraph, the prior art reference must disclose the invention of the Applicant, that is, the entire combination as recited in the claim at issue. In the present application, Applicants respectfully submit that *Perkowsky* does not teach the invention as claimed for the following reasons.

First, *Perkowsky* does not disclose a visual indicia for facilitating computer based access of a network by a consumer comprising the combination of a machine readable code and a visual indicia both disposed on a surface in a predetermined proximate orientation with each other. The Examiner is correct that *Perkowsky* discloses a machine readable code and *Perkowsky* also discloses a trademark. However, these are never disclosed as being used together in a predetermined proximate orientation with each other on a surface. In other words, the disclosures in *Perkowsky* must be modified by the addition of subject matter not disclosed in *Perkowsky* in order to meet the terms of Claim 1 as amended.

Second, *Perkowsky* does not disclose that the combination of a machine readable code related to a product or service and a visual indicia unrelated to a product or service disposed on a surface in a predetermined proximate orientation as recited in Applicants' Claim 1 is indicative of a relationship between that machine readable code and the presence of a location on a network. There is nothing about a barcode for example, in and of itself that indicates that the barcode or the information encoded therein indicates a relationship between that machine readable code and the presence of a location on a network. Thus, more is required to indicate such a relationship. Further, there is nothing in *Perkowsky* that relates the combination of a visual indicia unrelated to a product or service and a machine readable code related to a product or service disposed on a surface in a predetermined proximate orientation that necessarily indicates that such location on the network can be accessed by a computer having an appropriate input device for reading the machine readable code. Again, the disclosure of *Perkowsky* must be supplemented by additional subject matter in order to meet the requirements stated in Applicants' Claim 1 as amended.

To elaborate upon why the *Perkowsky* reference fails to provide sufficient disclosure under the

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statute to support a rejection under §102(e), Applicants respectfully point out the following. *Perkowsky* does indeed disclose universal product numbers, i.e., UPNs, which may be encoded as barcodes on a product or advertisement, as pointed out by the Examiner. Further, *Perkowsky* does indeed disclose trademarks or company names which may also appear upon a product or in an advertisement, there clearly being related to a product or a service. *Perkowsky* includes one database which relates the UPNs or USNs to an information resource having information about the product or service represented by the UPN or the USN which can be accessed by entry of the UPN or USN into the database. In another database the trademark or company name is related to the information resource and can be similarly accessed by entry of the trademark or company name to obtain the information provided by the information resource. The access of the consumer to the information resource is enabled using computer applications that include graphical user interfaces in which the user can specify which mode he or she wishes to utilize in order to access the desired information resource.

Applicants respectfully point out that the associations in *Perkowsky* between the barcoded information and the information resource or between the trademark and/or company name and the associated information resource in the respective databases exists only in the databases. This relationship does not exist outside the databases. Thus there is no association contemplated or disclosed in *Perkowsky* between a machine readable code related to the product or service and visual indicia unrelated to the product or service disposed in a predetermined proximate orientation with the machine readable code disposed on the surface of, for example, a product or printed matter associated with the product. Further, there is no disclosure in *Perkowsky* of the indicated relationships between the visual indicia combination of Applicants' Claim 1 and the functional attributes required of it as recited in Claim 1 as amended.

For the foregoing reasons, Applicants respectfully submit that *Perkowsky* does not anticipate or obviate Applicants' Claim 1 as amended and respectfully request the withdrawal of this rejection. Further, since dependent Claims 2-6 and 8 and 9 depend ultimately or directly from base Claim 1 and therefore contain all of the same limitations as Claim 1 as amended, that these dependent claims are likewise patentably distinct over the *Perkowsky* reference. Applicants respectfully request the

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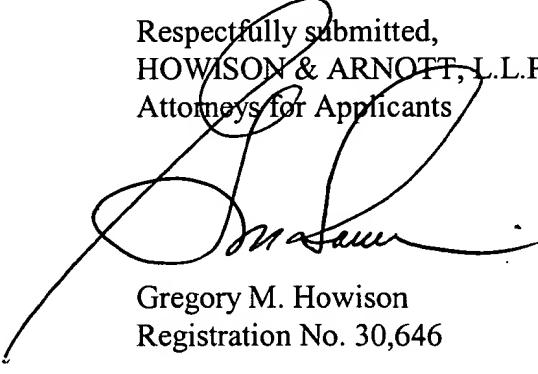
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withdrawal of the rejection as to dependent Claims 2-6 and 8 and 9.

Regarding Claim 7, rejected under 35 U.S.C. §103 as being unpatentable over *Perkowsk*i, Applicants respectfully traverse this rejection as follows. The Examiner is correct in that *Perkowsk*i does not explicitly teach that the machine readable code is an ISBN and that an ISBN is well known. However, Claim 7 incorporates all of the limitations of the base Claim 1 which has been shown hereinabove to be patentably distinct due to its unique combination as defined in the amended Claim 1.

Applicants have now made an earnest attempt in order to place this case in condition for allowance. For the reasons stated above, Applicants respectfully request full allowance of the claims as amended. Please charge any additional fees or deficiencies in fees or credit any overpayment to Deposit Account No. 20-0780/PHLY-24,740 of HOWISON & ARNOTT, L.L.P.

Respectfully submitted,  
HOWISON & ARNOTT, L.L.P.  
Attorneys for Applicants

  
Gregory M. Howison  
Registration No. 30,646

GMH:jk

P.O. Box 741715  
Dallas, Texas 75374-1715  
Tel: 972-479-0462  
Fax: 972-479-0464  
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